WILLS — EXECUTION — ATTESTING WITNESSES: ESTABLISHMENT OF LOST WILL WHERE ATTESTING WITNESSES UNKNOWN. — In an action to establish a lost will, adequate evidence was given of the contents and that the will was duly attested, but there was no evidence as to the names of the attesting witnesses. *Held*, that probate be granted. *In re Estate of Phibbs*, 33 T. L. R. 214.

A lost will may be established upon satisfactory proof of its due execution, of its destruction or loss, and of its contents. *Podmore* v. *Whatton*, 3 Sw. & Tr. 449. See *In re Hedgepeth's Will*, 150 N. C. 245, 250, 63 S. E. 1025, 1027. Proof of execution is a necessary preliminary to further proceedings. *Voorhees* v. *Voorhees*, 39 N. Y. 463. In the case of a lost will, just as when the document is actually produced, to prove execution the attesting witnesses must be called if accessible. See *In the Matter of Page*, 118 Ill. 576, 8 N. E. 852. If they are dead or beyond the jurisdiction of the court, other evidence may be used to prove execution. *Bailey* v. *Stiles*, 2 N. J. Eq. 220. See *Harris* v. *Tisereau*, 52 Ga. 153, 163. But when the witnesses are unknown it has been said that probate must fail, since it is impossible to call them or to show their inability to testify and thus to lay the foundation for the admission of other evidence. *Collyer* v. *Collyer*, 4 Dem. Surr. (N. Y.) 53, 60. On the contrary, however, it would seem that this fact in itself should be sufficient explanation of absence to warrant use of other evidence, since the circumstances permit nothing more. The court indeed might be led to greater strictness in determining the sufficiency of evidence. But relief should not be refused, if, as in the principal case, the other evidence of due execution is satisfactory. See *Dan* v. *Brown*, 4 Cow. (N. Y.) 483. *Cf. Jackson* v. *Vail*, 7 Wend. (N. Y.) 125.

BOOK REVIEWS

THE LAW OF INTERSTATE COMMERCE AND ITS FEDERAL REGULATION. By Frederick N. Judson. Third Edition. Chicago: T. H. Flood and Company. 1916. pp. xxix, 1066.

The application of the Commerce Clause divides with the issues raised by the limitation imposed upon state legislation by the Fourteenth Amendment the present energies of constitutional law. Judicial, as well as legislative, law-making in rich abundance calls for a revision of the conventional assumptions as to the scope of federal regulation in the field of interstate commerce. Great areas of industrial activities, hitherto left either unregulated or made the prey of conflicting state regulations, have felt the impact of the national power. The Adamson Law and the Child Labor Law and the Bone Dry Law raise legal questions of intense excitement because they touch so widely and so intimately the processes of our national life. But the courts as well as Congress have caused ferment. In the Shreveport decision (*Houston & Texas Ry.* v. *United States*, 234 U. S. 342) the Supreme Court in fact merely applied old provisions of the Interstate Commerce Act to a new situation. In effect, however, the court, by the Shreveport doctrine, has given the strongest impulse to the movement to make the federal government supreme in the whole domain of railroad rate regulation, affecting both intrastate or interstate shipments. (See *e. g.* the recent report of the Interstate Commerce Commission in *Memphis* v. *C. R. I. & P. Ry. Co.*, 43 Int. Com. Rep. 121.) Similarly, in working out the relation of foreign corporations to interstate commerce, and the resulting limitation upon state regulation of such corporations, we are getting a new body of judicial law, reversing in result and sometimes in terms earlier notions of constitutional law. (See *e. g. Western Union Co.* v. *Kansas*, 216 U. S. 1; *Pullman Co.* v. *Kansas*, 216 U. S. 56; *Harrison* v. *St.*

Louis & San Francisco Co., 232 U. S. 318.) To endeavor to integrate this field of law, to correlate the constitutional problems implicit in the legislation from the Ash Pan Act to the Webb-Kenyon Act, presents one of the most fascinating opportunities for a legal writer, no less than one of the most pressing needs towards a coherent development of the law. We are in danger of the anarchy of isolated decisions. To be sure, it is particularly true in the field of constitutional law, as we have been told by the most philosophic mind on the bench, that "lines are pricked out by the gradual approach and contact of decisions on the opposing sides" (219 U. S. 104, 112). But it is precisely the function of law writers to trace these lines, to indicate their direction, to seek to influence their course.

To quarrel with an author for not doing what he has not attempted to do is like preferring champagne to roast beef. Besides, a third edition is its own justification; as much so as is the size of the circulation of the Saturday Evening Post — but no more so. Not being, usually at least, a work of art one may ask of a law book — to what end? Mr. Judson is right. In the four years that have elapsed since his second edition much water has run under the interstate commerce mill. But Mr. Judson now, as heretofore, has contented himself with being a faithful chronicler rather than a participant in the development of the law. One wonders, however, if Mr. Judson is not partly attempting the impossible and partly needlessly duplicating. To attempt to cover in one book, even of 1000 pages (with its useful reprints of recent federal legislation), vital constitutional questions and general problems of law, together with a detailed commentary on such case-breeding legislation as the Interstate Commerce Act and the Sherman Law, is bound to result in compromises preventing the book from being either a critical study of underlying problems or a faithful digest of all the decisions. Why attempt it? We should have from Mr. Judson analysis, not merely enumeration of cases, when dealing with such subjects as what is commerce, concurrent powers as to interstate commerce, exclusion of foreign corporations, etc., etc. These are questions on which a mind stored with Mr. Judson's experience ought to have much to say. Division of labor in the field of law writing is inevitable. The detailed treatment of decisions of the Interstate Commerce Commission should be left to writers who make that field their special subject, as Mr. Drinker has so admirably done. Similarly does the Trade Commission call for separate treatment, such as it has already received at the hands of several competent writers. It is impossible for Mr. Judson to keep the profession supplied with the latest decisions. That task is now done with oppressive competence by Shepard's Citations and all its voracious tribe. A man who now speaks, and who spoke as early as Mr. Judson did, so shrewdly on the recognition of a separate body of administrative law in dealing with the field that he touches ought to give himself to the profession more generously.

FELIX FRANKFURTER.

TRUST LAWS AND UNFAIR COMPETITION. Report by the Federal Bureau of Corporations, Hon. Joseph E. Davies, Commissioner. Government Printing Office, 1915. pp. 812.

This is a book which every lawyer dealing with important business questions should possess. Prepared originally for the assistance of Congress during the debates which led to the establishment of the Federal Trade Commission, it furnishes — what nowhere else exists — a complete survey of the trust laws of every country in the world, and in so doing constitutes a real contribution to legal literature.

The discussion may be divided naturally into two principal divisions. The first deals with voluntary restraints of trade, where competition among the